IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1861 OF 2006
IN
SUIT NO.1649 OF 2006

H.P. Shah ....Plaintiff

V/s.

Prakash M. Davda ....Defendant

Mr.Haresh Jagtiani, Senior Counsel with Mr.Anil D'souza, Mr.Vidhi Sharma, Ms.Vandana Mehta, Mr.Hamed Kadiani and Ms.Fatema Gadhiali i/b Mr.Hitesh C. Dabhi for the Plaintiff.

Mr.U.J. Makhija, Senior Counsel with Mr.Ruchir Tolat i/b M/s.L.C. Tolat & Co. for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 17TH SEPTEMBER, 2007.

P.C. :

1. The Notice of Motion is being disposed of without going into the merits of the matter in view of Mr.Makhija, consenting on behalf of the Defendant to an order in terms of prayers (a-i), (a-ii) and (a-iii) of the Notice of Motion. This would protect the interest of the Plaintiff as far as this suit is concerned and at this stage of the suit. It is to be noted also that Mr.Makhija has not pressed the Notice of Motion taken out by the Defendant in this Suit.

2. There are very serious allegations including of forgery, fabrication and perjury against the Defendant and against certain third parties. I do not for a moment suggest that the Defendant would be entitled to avoid the consequences thereof, if true, merely by the Defendant agreeing to an order in terms of prayers (a-i), (a-ii) and (a-iii) of the Notice of Motion. Mr.Makhija fairly did not suggest anything to that effect either. It is open to the Plaintiff to adopt appropriate proceedings including by taking out a Notice of Motion in the present suit itself inter-alia for the same.

3. The alleged power of attorney, the alleged development agreement and the alleged letter of possession all dated 27.7.1996 are ordered and directed to be deposited by the Defendant in this Court. The said documents are part of Exhibit "I" to this suit. Exhibit "I" is a copy of the plaint in Suit No.427 of 1998 filed by the Defendant in the Bombay City Civil Court. The Registrar, (O.S.)/Prothonotary and Senior Master shall keep the documents in safe custody.

4. The parties are at liberty to take copies of

the said documents from this Court after the same are deposited upon payment of costs. Inspection and copies thereof shall be taken by the parties in presence of each other and/or their advocates and in present of an officer of this Court.

5. Mr.Makhija has clarified that the Defendant only has xerox copies of the letter dated 21.7.2006 from the Plaintiff to the Secretary of Nutan Laxmi Co-operative Housing Society Ltd and a certificate dated 27.8.1996 issued by the said society and referred to in paragraph 13 of the affidavit in reply dated 14.9.2007. The letters are part of Exhibit "K" to the plaint (pages 156 and 157 of the plaint). The affidavit of the Defendant dated 14.9.2007 is presently not traceable in the records assuming the same has been filed. The parties have tendered a copy thereof which is taken on record and marked "X".

6. Mr.Makhija states that he has agreed to this order without prejudice to his rights and contentions to adopt appropriate proceedings in accordance with law.

7. Mr.Jagtiani, the learned Senior Counsel appearing on behalf of the Plaintiffs states that

without prejudice to his rights till 15.10.2007 the Plaintiff will not encumber, alienate, sell or create any third party right in respect of the suit property without the leave of the Court.

The Notice of Motion is accordingly disposed of.